

§ 1.629 Effect of preliminary statement.

(a) A party shall be strictly held to any date alleged in the preliminary statement. Doubts as to definiteness or sufficiency of any allegation in a preliminary statement or compliance with formal requirements will be resolved against the party filing the statement by restricting the party to its effective filing date or to the latest date of a period alleged in the preliminary statement, as may be appropriate. A party may not correct a preliminary statement except as provided by § 1.628.

(b) Evidence which shows that an act alleged in the preliminary statement occurred prior to the date alleged in the statement shall establish only that the act occurred as early as the date alleged in the statement.

(c) If a party does not file a preliminary statement, the party:

(1) Shall be restricted to the party's effective filing date and

(2) Will not be permitted to prove that:

(i) The party made the invention prior to the party's filing date or

(ii) Any opponent derived the invention from the party.

(d) If a party files a preliminary statement which contains an allegation of a date of first drawing or first written description and the party does not file a copy of the first drawing or written description with the preliminary statement as required by § 1.623(c), § 1.624(c), or § 1.625(c), the party will be restricted to the party's effective filing date as to that allegation unless the party complies with § 1.628(b). The content of any drawing or written description submitted with a preliminary statement will not normally be evaluated or considered by the Board.

(e) A preliminary statement shall not be used as evidence on behalf of the party filing the statement.

[49 FR 48455, Dec. 12, 1984, as amended at 60 FR 14523, Mar. 17, 1995]

§ 1.630 Reliance on earlier application.

A party shall not be entitled to rely on the filing date of an earlier filed application unless the earlier application is identified (§ 1.611(c)(5)) in the notice declaring the interference or the party

files a preliminary motion under § 1.633 seeking the benefit of the filing date of the earlier application.

[60 FR 14524, Mar. 17, 1995]

§ 1.631 Access to preliminary statement, service of preliminary statement.

(a) Unless otherwise ordered by an administrative patent judge, concurrently with entry of a decision on preliminary motions filed under § 1.633 any preliminary statement filed under § 1.621(a) shall be opened to inspection by the senior party and any junior party who filed a preliminary statement. Within a time set by the administrative patent judge, a party shall serve a copy of its preliminary statement on each opponent who served a notice under § 1.621(b).

(b) A junior party who does not file a preliminary statement shall not have access to the preliminary statement of any other party.

(c) If an interference is terminated before the preliminary statements have been opened, the preliminary statements will remain sealed and will be returned to the respective parties who submitted the statements.

[49 FR 48455, Dec. 12, 1984; 50 FR 23124, May 31, 1985, as amended at 60 FR 14524, Mar. 17, 1995]

§ 1.632 Notice of intent to argue abandonment, suppression or concealment by opponent.

A notice shall be filed by a party who intends to argue that an opponent has abandoned, suppressed, or concealed an actual reduction to practice (35 U.S.C. 102(g)). A party will not be permitted to argue abandonment, suppression, or concealment by an opponent unless the notice is timely filed. Unless authorized otherwise by an administrative patent judge, a notice is timely when filed within ten (10) days after the close of the testimony-in-chief of the opponent.

[60 FR 14524, Mar. 17, 1995]

§ 1.633 Preliminary motions.

A party may file the following preliminary motions: